IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3693 OF 2007

IN

(CONTEMPT NOTICE OF MOTION NO.421 OF 2002)

IN

L.C.SUIT NO.1050 OF 1999

Ramnik Ravji Vadodriya ...Petitioner

Versus

Municipal Corporation of Greater Mumbai ...Respondent (Ori.Defts.)

And

Shri Udan, Addl.Dy.Collector (Enc). & Ors. ...Respondents (Contemnors)

.....

Mr.S.M.Kamble for Petitioner.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JULY 6, 2007.

P.C.

1. Heard Counsel for the Petitioner.

2. As it is not in dispute that the Collector on its own had initiated independent action of demolition and no injunction against the Collector was sought in any proceedings, no fault can be found with the Collector having proceeded with the demolition action and take it to its logical end, in absence of any injunction against the Collector. The fact that the Office of the Collector was apprised of the injunction granted by the Civil Court in respect of the suit structure in L.C. Suit No.1050 of 1999, does not take the matter any further.

3. In the first place, Collector is not party to the said proceedings. Obviously, the action initiated by the Petitioner before the Civil Court being L.C. Suit No.1050 of 1999 is on independent cause of action against the Municipal Corporation alone. Injunction granted in such action cannot be an inhibition for another independent authority to proceed with the proposed action of demolition in respect of which there is no stay or prohibitive order from any competent Court so as to take that

action to its logical end. In that case, such Authority cannot be indicted for having committed contempt of Court in respect of order of injunction operating in relation to independent cause of action and to which it is not party.

4. Counsel for the Petitioner has placed reliance on the decision of the Apex Court in **Babulal & Anr. v. Municipal Corpn., Ratlam & Ors. reported in (2005) 13 SCC 101** to contend that even if the Collector was not party to the proceedings instituted by the Petitioner against the Corporation, for which reason, no injunction was operating against the Collector as such, nevertheless, the Collector ought to have stayed of his hands in view of the injunction order granted by the Civil Court in respect of the suit structure, as he would be responsible for aiding and abetting of contempt. That is not the ratio of the decision pressed into service. The decision merely records that it is a debatable issue as to whether contempt action can proceed against a person who is not a party to order of injunction.

5. For the reasons already recorded earlier that the Petitioner having failed to institute any proceeding or obtained any injunction in relation to the proposed action of the Collector which was an independent cause of action, that authority was free to proceed in respect of the suit structure notwithstanding the order of injunction by the Civil Court against the Corporation.

6. Counsel for the Petitioner submits that in any case, the opinion recorded by the Trial Court that no action can proceed against Respondent No.3 is inappropriate. I find no reason to depart from the view taken by the Trial Court in that behalf. This is so because it is not the Petitioner's case that Respondent No.3 who is the Engineer in Municipal Corporation had resorted to demolition of the suit structure. There is no material placed on record that the Respondent No.3 instructed the Collector to initiate action in respect of the suit structure or to demolish the same. The action by the Collector, as is observed earlier, was independent action and not proposed by the Corporation. Hence, even that opinion of the Trial

Court will have to be upheld. Petition dismissed.

A.M.KHANWILKAR, J.